



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2012-0814; FRL-9910-42-Region 4]

#### **Approval and Promulgation of Implementation Plans; Region 4 States; Visibility Protection Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve submissions from Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee for inclusion into each state's respective state implementation plan (SIP). This action pertains to Clean Air Act (CAA or Act) requirements regarding the protection of visibility in another state for the 1997 annual and 2006 24-hour fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. These plans are commonly referred to as "infrastructure" SIPs. Specifically, EPA is taking final action to approve the submissions for Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee as they relate to the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS infrastructure SIP requirements to protect visibility in other states. All other applicable infrastructure requirements for these NAAQS associated with these seven states have been addressed in separate rulemakings.

**DATES:** This rule will be effective [insert 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0814. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 36852), EPA promulgated a new annual PM<sub>2.5</sub> NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour NAAQS. On February 20, 2013, EPA proposed to approve SIP submissions from Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee as they relate to section 110(a)(2)(D)(i)(II) infrastructure SIP requirements to protect visibility in other states for both the 1997 and 2006 PM<sub>2.5</sub> NAAQS. A summary of the background for today's final action is provided below. See EPA's February 20, 2013, proposed rulemaking at 78 FR 11805 for more detail.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state (prong 3), and to protect visibility in another state

(prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

EPA has previously taken action to address SIP submissions from Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee related to prongs 1 through 3 of section 110(a)(2)(D)(i) and the requirements of section 110(a)(2)(D)(ii) for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. Today's final rulemaking relates only to prong 4 of section 110(a)(2)(D)(i)(II), which as previously described, requires that infrastructure SIPs contain adequate provisions to protect visibility in other states.

## **II. Response to Comments**

EPA received three sets of comments on the February 20, 2013 proposed rulemaking to approve the SIP submissions from Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee addressing prong 4 of section 110(a)(2)(D)(i)(II). Two of the commenters, the Municipal Electric Authority of Georgia and the Utility Air Regulatory Group, support EPA's proposed action and one commenter, the National Parks Conservation Association (the "Commenter"), opposes the proposed action. A summary of the adverse comments and EPA's responses are provided below.

**Comment 1:** The Commenter states that EPA must disapprove the infrastructure SIP submissions from Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee as they relate to prong 4 of section 110(a)(2)(D)(i) because the submittals rely on the Clean Air Interstate Rule (CAIR) to satisfy best available retrofit technology (BART) and reasonable progress requirements for CAIR-subject electric generating units (EGUs). According

to the Commenter, EPA must direct each state to develop a plan consistent with the requirements of the Regional Haze Rule for source-specific BART and reasonable progress for nitrogen oxide (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) emissions from EGUs subject to these regional haze provisions. The Commenter contends that reliance on CAIR is improper because CAIR was “declared illegal” and remanded by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008) and is therefore not permanent and enforceable. The Commenter further contends that CAIR cannot substitute for BART because it is impermissible under section 169A of the CAA for EPA or the states to rely on a cap-and-trade program as a substitute for, or exemption from, BART and because EPA’s better-than-BART provision in the Regional Haze Rule violates the CAA. The Commenter also believes that Alabama, Georgia, Kentucky, North Carolina, and South Carolina improperly relied on CAIR to “exempt” sources from a reasonable progress review and that, “[i]n most cases, the states did not perform a unit-specific reasonable progress analysis, but more generally asserted that reliance on CAIR was sufficient for reasonable progress.” The Commenter believes that in the absence of such an analysis, “it is not possible to determine whether or the extent to which CAIR may fulfill RP requirements, assuming that it could overcome the impossible hurdle of being an unenforceable program.” The Commenter is concerned that the reliance on CAIR to “remove emission reduction obligations from many sources of SO<sub>2</sub>” and the “methodical elimination of sources of NO<sub>x</sub> and PM emissions” through the states’ area of influence methodology “may have prevented the achievement of meaningful reasonable progress.” The Commenter also believes that “it is incumbent upon the states and EPA to demonstrate in their SIPs that they have actually taken all measures necessary to reduce their share of pollutants” to

meet reasonable progress goals in neighboring states' Class I areas, citing language in 40 CFR 51.308(d)(3)(ii).

**Response 1:** EPA disagrees with the Commenter. As discussed in EPA's proposed rulemaking related to today's action, the D.C. Circuit vacated the Cross-State Air Pollution Rule (CSAPR) in *EME Homer City Generation v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012) and ordered EPA to "continue administering CAIR pending the promulgation of a valid replacement." The Agency believes that it is therefore appropriate for EPA to rely on CAIR emission reductions for purposes of assessing the adequacy of the infrastructure SIPs subject to this action with respect to prong 4 of section 110(a)(2)(D)(i)(II) while a valid replacement rule is developed and until submissions complying with any such new rule are submitted by the states and acted upon by EPA or until *EME Homer City* is resolved in a way that provides different direction regarding CAIR and CSAPR.

Furthermore, CAIR remains part of the federally-approved SIPs for Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee and can be considered in determining whether each of the infrastructure SIPs subject to today's action meets the requirements of prong 4. EPA is taking final action to approve these infrastructure SIP submissions with respect to prong 4 because the EPA-approved regional haze SIP for each state, in combination with each state's implementation plan provisions to implement CAIR, adequately prevent sources in each state from interfering with measures adopted by other states to protect visibility during the first planning period.<sup>1</sup> EPA notes that all of the rulemakings and proposed

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<sup>1</sup> Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even those parts that are deficient and prevent EPA from granting a full

rulemakings cited by the Commenter that discuss the limited approvability of SIPs due to the status of CAIR were issued by EPA prior to the vacatur of CSAPR. Since the vacatur of CSAPR in August 2012 and with continued implementation of CAIR per the direction of the D.C. Circuit in *EME Homer City*, EPA has approved redesignations of areas to attainment of the 1997 and 2006 PM<sub>2.5</sub> NAAQS in which states have relied on CAIR as a permanent and enforceable measure.<sup>2</sup>

EPA disagrees with the Commenter that the CAA does not allow states to rely on an alternative program such as CAIR in lieu of source-specific BART. EPA's regulations allow states to adopt alternatives to BART that provide for greater reasonable progress, and EPA's determination that states may rely on CAIR to meet the BART requirements has been upheld by the D.C. Circuit as meeting the requirements of the CAA. In the first case challenging the provisions in the Regional Haze Rule allowing for states to adopt alternative programs in lieu of BART, *Center for Energy and Economic Development v. EPA*, 398 F.3d 653, 660 (D.C. Cir. 2005), the court affirmed the Agency's interpretation of section 169A(b)(2) as allowing for alternatives to BART where those alternatives will result in greater reasonable progress than BART. In the second case, *Utility Air Regulatory Group v. EPA*, 471 F.3d 1333 (D.C. Cir.

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approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions*, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I-X, September 7, 1992, (1992 Calcagni Memorandum) located at <http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf>. Therefore, EPA believes it is appropriate to approve the infrastructure SIPs subject to today's action as they relate to prong 4 despite the limited approval granted to the relevant regional haze SIPs.

The SIP provisions implementing CAIR for each of the states subject to this action are identified in the following sections of 40 CFR Part 52: 52.50(c) (Alabama); 52.570(c) (Georgia); 52.920(c) (Kentucky); 52.1270(c) (Mississippi); 52.1770(c) (North Carolina); 52.2120(c) (South Carolina); and 52.2220(c) (Tennessee).

<sup>2</sup> See 77 FR 76415 (Dec. 28, 2012) (redesignation of Huntingdon-Ashland, West Virginia for the 1997 PM<sub>2.5</sub> NAAQS); 78 FR 59841 (Sept. 30, 2013) (redesignation of Wheeling, West Virginia for the 1997 PM<sub>2.5</sub> NAAQS); 78 FR 56168 (Sept. 12, 2013) (redesignation of Parkersburg, West Virginia for the 1997 PM<sub>2.5</sub> NAAQS); 78 FR 5306 (Jan. 25, 2013) (redesignation of Birmingham, Alabama for the 2006 PM<sub>2.5</sub> NAAQS).

2006), the court specifically upheld EPA’s determination that states could rely on CAIR as an alternative to BART for EGUs in the CAIR-affected states. The court concluded that the EPA’s two-pronged test for determining whether an alternative program achieves greater reasonable progress was a reasonable one and also agreed with EPA that nothing in the CAA required the EPA to “impose a separate technology mandate for sources whose emissions affect Class I areas, rather than piggy-backing on solutions devised under other statutory categories, where such solutions meet the statutory requirements.”<sup>3</sup>

More fundamentally, EPA disagrees with the Commenter that the adequacy of the BART measures in the regional haze SIPs for these states is relevant to the question of whether each state’s implementation plan meets the requirements of section 110(a)(2)(D)(i) of the CAA with respect to visibility. EPA interprets the visibility provisions in this section of the CAA as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. The Regional Haze Rule includes a similar requirement in 40 CFR 51.308(d)(3), and for each of the states subject to this action, EPA found that the respective regional haze SIP meets this requirement.<sup>4</sup> Each of these states relied on CAIR to achieve significant reductions in emissions to both meet the BART requirements and to address impacts of the state on Class I areas in other states.<sup>5</sup> The question of

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<sup>3</sup> *Utility Air Regulatory Group*, 471 F.3d at 1340.

<sup>4</sup> See Alabama: 77 FR 11937, 11947-48, 11955-56 (Feb. 28, 2012) (proposed), 77 FR 38515 (June 28, 2012) (final); Georgia: 77 FR 11452, 11463, 11474-75 (Feb. 27, 2012) (proposed), 77 FR 38501 (June 28, 2012) (final); Kentucky: 76 FR 78194, 78205-06, 78213 (Dec. 16, 2011) (proposed), 77 FR 19098 (Mar. 30, 2012) (final); Mississippi: 77 FR 11879, 11888, 11892 (Feb. 28, 2012) (proposed), 77 FR 38191 (June 27, 2012) (final); North Carolina: 77 FR 11858, 11869, 11877 (Feb. 28, 2012) (proposed), 77 FR 38185 (June 27, 2012) (final); South Carolina: 77 FR 11894, 11904, 11911-12 (Feb. 28, 2012) (proposed), 77 FR 38509 (June 28, 2012) (final); Tennessee: 76 FR 33662, 33673, 33683-84 (June 9, 2011) (proposed), 77 FR 24392 (Apr. 24, 2012) (final).

<sup>5</sup> See, e.g., 77 FR 11949, 11951, 11956.



whether or not CAIR satisfies the BART requirements has no bearing on whether these measures meet the requirements of prong 4.

Regarding the reasonable progress evaluations, each state at issue focused its reasonable progress analysis on SO<sub>2</sub> emissions based on the conclusion that sulfate particles account for the greatest portion of the regional haze affecting Class I areas in these states.<sup>6</sup> Each state then established areas of influence and contribution thresholds to determine which of its sources should be evaluated for reasonable progress control.<sup>7</sup> EPA approved each state's methodology for identifying units for reasonable progress evaluation and each state's reasonable progress determinations in the respective regional haze SIP actions and provided a detailed discussion of the methodology and the rationale for approval in the Federal Register notices associated with those actions.<sup>8</sup>

Contrary to the Commenter's assertions, Alabama, Georgia, Kentucky, North Carolina, and South Carolina did not "exempt [CAIR] sources . . . that would otherwise be subject to reasonable progress review." Each of these states considered the four statutory reasonable progress factors in evaluating whether CAIR would satisfy reasonable progress requirements for the state's EGU sector and determined that no additional controls beyond CAIR were reasonable

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<sup>6</sup> This conclusion was reached by the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) regional planning organization and adopted by each of the VISTAS states in their respective regional haze SIP submissions. VISTAS member states include: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. VISTAS determined that ammonium sulfate accounted for 69 to 87 percent of the calculated light extinction at the 18 Class I areas within the region. See, e.g., 77 FR 11946.

In evaluating reasonable progress, states may identify and focus on key pollutants that contribute to visibility impairment. EPA, *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program* at 3-1 (June 1, 2007) [hereinafter "Reasonable Progress Guidance"].

<sup>7</sup> See, e.g., 77 FR 11947-48.

<sup>8</sup> See, e.g., *id.* at 11946-49.

for SO<sub>2</sub> during the first planning period.<sup>9</sup> As discussed in EPA's Reasonable Progress Guidance, states may evaluate the need for reasonable progress controls on a source category basis, rather than through a unit-specific analysis, and have wide latitude to determine additional control requirements for ensuring reasonable progress.<sup>10</sup> The guidance also notes that states may consider emissions reductions from cap-and-trade programs such as CAIR in addition to source-specific controls.<sup>11</sup>

As mentioned above, EPA determined that each of the regional haze SIPs submitted by the states subject to this action adequately prevents sources in the state from interfering with the reasonable progress goals adopted by other states to protect visibility during the first planning period, thus satisfying the requirements of 40 CFR 51.308(d)(3). These states participated in a regional planning process through VISTAS, and their SIPs include all measures needed to achieve their respective apportionment of emissions reduction obligations agreed upon through that process as required by 40 CFR 51.308(d)(3)(ii).<sup>12</sup>

**Comment 2:** EPA must disapprove the infrastructure SIP submittals from North Carolina and South Carolina under prong 4 of 110(a)(2)(D)(i) because EPA has not approved the State's five-year progress reports.

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<sup>9</sup> 77 FR 11949; 77 FR 11464-69; 76 FR 78206-07; 77 FR 11872; 77 FR 11906-07. Georgia concluded that additional controls were not required on CAIR-subject EGUs that significantly contributed to visibility impairment at Class I areas that are clearly projected to meet or exceed the Uniform Rate of Progress (URP) in 2018 because of CAIR emissions reductions and the emissions reductions associated with Georgia state rule 391-3-1-.02(13) (capping SO<sub>2</sub> emissions from Georgia EGUs in 2015 at 30 percent of 2002 actual emissions). Georgia evaluated reasonable progress controls for EGUs that significantly contributed to visibility impairment at Class I areas not meeting the URP. 77 FR 11469.

<sup>10</sup> Reasonable Progress Guidance at 4-2.

<sup>11</sup> Id.

<sup>12</sup> See, e.g., 77 FR 38193.

**Response 2:** EPA disagrees with the Commenter. EPA received the North Carolina and South Carolina progress report SIP submittals on May 31, 2013, and December 28, 2012, respectively. As of this final rulemaking, EPA has not taken final action on these submissions, and no such action is due pursuant to CAA section 110(k)(2) at this time. Therefore, EPA does not believe that EPA approval of these progress reports is a required structural element necessary before EPA may approve the North Carolina and South Carolina infrastructure SIPs subject to this action.

Nevertheless, EPA notes that it has proposed approval of South Carolina's progress report SIP submission since the publication of the proposed infrastructure action that is the subject of this rulemaking.<sup>13</sup> As discussed in the proposed rulemaking on the progress report, South Carolina provided SO<sub>2</sub> emissions data from EPA's Clean Air Markets Division (CAMD) for EGUs in South Carolina and in the entire VISTAS region from 2002-2011.<sup>14</sup> This data indicates that emissions of SO<sub>2</sub>, the primary contributor to visibility impairment in the VISTAS region, have declined significantly since South Carolina submitted its regional haze SIP in 2007.<sup>15</sup> South Carolina's progress report also states that total SO<sub>2</sub> emissions from South Carolina EGUs are already below the 2018 projections in South Carolina's 2007 regional haze SIP submittal and are expected to decrease further.<sup>16</sup> In addition, the most current visibility data available at the time of EPA's proposed approval of the progress report shows that visibility has improved at the Cape Romain Wilderness Area, the Class I area within South Carolina.<sup>17</sup> For

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<sup>13</sup> 79 FR 3147 (Jan. 17, 2014).

<sup>14</sup> Id. at 3150.

<sup>15</sup> Id.

<sup>16</sup> Id. at 3151.

<sup>17</sup> Id. at 3152.

these reasons, EPA has proposed to approve South Carolina's negative declaration pursuant to 40 CFR 51.308(h) that no further substantive revision of the State's regional haze SIP is required at this time to achieve the reasonable progress goals for Class I areas affected by the State's sources and continues to believe that the State's existing SIP (including the regional haze SIP and CAIR) contains adequate provisions to meet the visibility protection requirements of section 110(a)(2)(D)(i)(II).<sup>18</sup>

Although EPA has not yet proposed action on North Carolina's progress report SIP, the Agency has performed a preliminary review of the submission. North Carolina included 2011 SO<sub>2</sub> emissions data from CAMD for EGUs in North Carolina that are expected to be retired by 2015 and for EGUs that were projected in the 2007 regional haze SIP submission to have controls installed by 2018.<sup>19</sup> Based on this data, North Carolina reported a reduction in SO<sub>2</sub> emissions of approximately 390,000 tons per year from these units between 2002-2011 and estimated that 2018 SO<sub>2</sub> emissions would be approximately 80 percent lower than those projected in the regional haze SIP.<sup>20</sup> North Carolina also provided visibility data supporting its conclusion that visibility has improved since the 2000-2004 baseline at all five of the Class I areas in the State.<sup>21</sup> Based on EPA's preliminary review of this information and other information provided in the State's progress report SIP submission, EPA continues to believe, at this time, that the State's existing SIP (including the regional haze SIP and CAIR) contains adequate provisions to meet the visibility protection requirements of section 110(a)(2)(D)(i)(II).

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<sup>18</sup> 79 FR at 3152.

<sup>19</sup> Regional Haze 5-Year Periodic Review State Implementation Plan for North Carolina Class I Areas (May 31, 2013) at 32-36.

<sup>20</sup> Id. at 32.

<sup>21</sup> Id. at 42-44.

### **III. This Action**

EPA is taking final action to approve the infrastructure SIP submissions from Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee as demonstrating that these states meet the applicable requirements of section 110(a)(2)(D)(i) of the CAA that relate to the protection of visibility in other states for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. In describing how its submission meets this requirement, Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee each referred to EPA-approved state provisions requiring EGUs to comply with the CAIR and to the limited approval and limited disapproval of its regional haze SIP. Although EPA has not fully approved the regional haze SIPs from these states, the Agency believes that the infrastructure SIP submission together with previously approved SIP provisions, specifically those provisions that require EGUs to comply with CAIR and the additional measures in the regional haze SIP addressing BART and reasonable progress requirements for other sources or pollutants, are adequate to demonstrate compliance with prong 4.

### **IV. Final Action**

As described above, EPA is approving SIP submissions from Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee to incorporate provisions into the states' implementation plans to address prong 4 of section 110(a)(2)(D)(i) of the CAA for both the 1997 and 2006 PM<sub>2.5</sub> NAAQS because these submissions are consistent with section 110 of the CAA.

### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

EPA has determined that this final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there are no “substantial direct effects” on an Indian Tribe as a result of this action. EPA notes that the Catawba Indian Nation Reservation is located within South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, “all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” Thus, while the South Carolina SIP applies to the Catawba Reservation, because today’s action is not a substantive revision to the South Carolina SIP, and is instead approving South Carolina’s infrastructure SIP submission to incorporate provisions satisfying prong 4 of section 110(a)(2)(D)(i), EPA has determined that today’s action will have no “substantial direct effects” on the Catawba Indian Nation. EPA has also determined that these revisions will not impose any substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).



**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 18, 2014

A. Stanley Meiburg

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

## **PART 52- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

### **Subpart B—Alabama**

2. Section 52.50(e) is amended by adding two new entries for “110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards” and “110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards” at the end of the table to read as follows:

#### **§ 52.50 Identification of plan.**

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(e) \* \* \*

EPA-Approved Alabama Non-Regulatory Provisions

<b>Name of nonregulatory SIP provision</b>	<b>Applicable geographic or nonattainment area</b>	<b>State submittal date/effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards	Alabama	7/25/2008	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only

110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards	Alabama	9/23/2009	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only
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### Subpart L—Georgia

3. Section 52.570(e) is amended by adding two new entries for “110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards” and “110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards” at the end of the table to read as follows:

#### § 52.570 Identification of plan.

\* \* \* \*

(e) \* \* \*

#### EPA-Approved Georgia Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards	Georgia	7/23/2008	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only

110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards	Georgia	10/21/2009	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only
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### Subpart S—Kentucky

4. Section 52.920(e) is amended by adding two new entries for “110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards” and “110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.” at the end of the table to read as follows:

#### § 52.920 Identification of plan.

\* \* \* \*

(e) \* \* \*

#### EPA-Approved Kentucky Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards	Kentucky	8/26/2008	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only

110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards	Kentucky	7/17/2012	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only
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### Subpart Z—Mississippi

5. Section 52.1270(e) is amended by adding two new entries for “110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards” and “110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards” at the end of the table to read as follows:

#### § 52.1270 Identification of plan.

\* \* \* \*

(e) \* \* \*

#### EPA-Approved Mississippi Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality	Mississippi	12/7/2007	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only

Standards				
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards	Mississippi	10/6/2009	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only

## Subpart II—North Carolina

6. Section 52.1770(e) is amended by adding two new entries for “110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards” and “110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards” at the end of the table to read as follows:

### § 52.1770 Identification of plan.

\* \* \* \*

(e) \* \* \*

### EPA-Approved North Carolina Non-Regulatory Provisions

Provision	State effective date	EPA approval date	Federal Register citation	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards	4/1/2008	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only

110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards	9/21/2009	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	[Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only
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### Subpart PP—South Carolina

7. Section 52.2120(e) is amended by adding two new entries for “110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards” and “110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards” at the end of the table to read as follows:

#### § 52.2120 Identification of plan.

\* \* \* \*

(e) \* \* \*

#### EPA-Approved South Carolina Non-Regulatory Provisions

Provision	State effective date	EPA approval date	Explanation
**	**	**	*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards	4/14/2008	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only

110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards	9/18/2009	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only
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### Subpart RR—Tennessee

8. Section 52.2220(e), is amended by adding two new entries for “110(a)(1) and (2)

Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality

Standards” and “110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter

National Ambient Air Quality Standards” at the end of the table to read as follows:

#### § 52.2220 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

#### EPA-Approved Tennessee non-regulatory provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality	Tennessee	12/14/2007	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only



Standards				
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards	Tennessee	10/19/2009	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i) only

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